

27123

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Karri OSARA et al.	Group Art Unit:	1795
		Examiner:	Bell, Bruce F.
Filed:	May 4, 2005		
		Customer No.:	27123
For:	METHOD FOR THE FORMATION OF A GOOD CONTACT SURFACE ON AN ALUMINIUM SUPPORT BAR AND SUPPORT BAR		

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Commissioner for Patents
P.O. Box 1450
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STATEMENT REGARDING PATENT TERM ADJUSTMENT UNDER WYETH V. DUDAS

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Sir:

Applicants herein address the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) as set forth in the paper mailed to applicants with the Notice of Allowance on October 7, 2008. Specifically, applicants believe that the subject application is entitled to additional Patent Term Adjustment in view of the decision in *Wyeth v. Dudas*, No. 07-1492, 2008 U.S. Dist. LEXIS 76063 (D.D.C. 2008). Applicants set forth the bases for this belief below.

The court in *Wyeth* concluded that, under 35 U.S.C. § 154(b)(2)(A), periods of delay can only overlap if they occur on the same calendar day. Accordingly, applicants believe that the subject application is entitled to an additional 123 days of Patent Term Adjustment beyond the 474 days set forth on the October 7, 2008 Determination. These additional 123 days arise under 35 U.S.C. § 154(b)(1)(B) as the period of time beginning May 4, 2008 (*i.e.*, three years after the filing date) and ending on September 4, 2008 (*i.e.*, the filing of a Request for Continued Examination). Applicants note that this period of time does not overlap any calendar days from which the 474-day delay under 35 U.S.C. §

154(b)(1)(A) was calculated (*i.e.*, the 503-day delay in issuing a first notice under 35 U.S.C. § 132 occurring between July 4, 2006 and November 19, 2007, less applicants' own delay).

Applicants expressly reserve the right to request an additional 123 days of Patent Term Adjustment should *Wyeth* be upheld by the Court of Appeals for the Federal Circuit.

- ☒ The Commissioner is hereby authorized to charge any additional fees which may be required by this paper, or credit any overpayment to Deposit Account No. **13-4500**, Order No. **4819-4743**.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: November 14, 2008

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